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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,268	12/12/2003	Timothy W. Olsen	600.571US1	2188
21186 7590 08/16/2007 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER DAWSON, GLENN K	
			ART UNIT 3731	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/735,268

Applicant(s)

OLSEN ET AL.

Examiner

Glenn K. Dawson

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 34-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 10, 13-15, 17-24 and 27-33 is/are rejected.
- 7) ☒ Claim(s) 4, 6-9, 11, 12, 16, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>08-23-2004</u> | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 19-21 it is unclear if the applicant is intending to add the track to the positively claimed elements of the tubular legs of claim 14.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14,17,18,20 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Foulkes-7175594.

Foulkes discloses an apparatus having two tubular legs attached to a track 12,20. The legs are held in alignment until flexed. As shown in fig. 1, the track is placed inside the lumens of the two tubular legs. A thruster assembly 14 is also shown in fig. 1

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ren, et al.-5688264.

Ren discloses a tubular guide 28 and a thruster either 70, or 71 or 72 and a sleeve 30 surrounding a portion of the thruster.

Claims 27 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Prwes-6010518.

Prwes discloses in fig. 6 and 6a a system having a plastic polymeric guide tube unnumbered, but directly contacting the balloon and shown in fig. 6a, and a balloon 8 which due to the angled cut at the end of tube 7 exits out a side of the tube through an aperture in the side of the tube. A sheath 3 as shown in fig. 6a is included. The balloon positioning means is 13 and 14.

Claims 27,28,29 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Sewell-5359995.

Sewell discloses a guide tube 51 with a side aperture and a balloon 54 which can be inflated and distend out from the aperture. The tube is placed into a sheath 30. An introducer 70 could be used to insert the guide tube.

Claims 14,17,20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Sher-5171254.

Sher discloses an apparatus having two tubular legs 38 which can be coupled to a track 22,28,61. A thruster means is also present 34.

Claims 14,17,19 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Lyons-5054906.

Lyons discloses an apparatus having two tubular legs 44,48,52 which can couple to a track-36,38,40,42. A light source 43 and 47 is attached to the track.

Claims 1-5,8,9,11,14,17 and 19-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Asrican-3680546.

Asrican discloses a system including a guide-14,15,21,22,23,24 and a thruster 52 attached thereto. The thruster had a pivoting link about a pin. Two light sources are attached 42 and 50. Two tubular legs are also disclosed 34-41. The positioning means for the thruster is the proximal handle portion.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 3731

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Foulkes-'594.

Foulkes discloses the invention as claimed with the exception of the legs being stainless steel. However, making them stainless steel would have been a mere obvious design choice as any known material capable of delivering fluid therethrough would have worked equally as well.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prwes-'518.

Prwes discloses the invention as claimed with the exception of the light source in the embodiment with the guide tube and sheath of fig. 6a. However fig. 6 shows another embodiment with a light source. It would have been obvious to have provided each of the embodiments with a light source in order to illuminate the operative field.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sewell-'995.

Sewell discloses the invention as claimed with the exception of the guide tube being polymeric. However, making the tube of Sewell polymeric would have been a

Art Unit: 3731

mere obvious design choice as any known rigid plastic tube would have performed equally as well.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sher-'254 or Lyons-'906.

Sher and Lyons disclose the invention as claimed with the exception of the material of the legs. However, making them stainless steel would have been a mere obvious design choice as any known material capable of delivering fluid therethrough would have worked equally as well.

Claims 10,13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asrican-'546.

Asrican discloses the invention as claimed with the exception of the source being a side emitting filament and the leg material. Making the legs stainless steel would have been a mere obvious design choice as any known material capable of delivering fluid therethrough would have worked equally as well. Using a side-emitting filament instead of an end emitter would have been an obvious design choice as emitting from the side would merely change the orientation of the source relative to the rest of the device.

Allowable Subject Matter

Claims 4,6-9,11,12,16,25 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Election/Restrictions

Claims 34-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06-07-2007.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3731

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Glenn K Dawson
Primary Examiner
Art Unit 3731

Gkd
10 August 2007